IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8609 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VALJIBHAI LAXMANBHAI DODIA

Versus

NALINKUMAR VALJIBHAI PITHADIA

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Appearance:

1. Special Civil Application No. 8609 of 2002

M/S.VYAS ASSOCIATES for Petitioner No. 1

MR SANDEEP N BHATT for Respondent No. 1/1-1/5

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/02/2003

ORAL JUDGEMENT

1. Rule. Mr. Sandip Bhatt, learned advocate appears and waives service of notice of Rule on behalf of

the respondents and he has also filed affidavits of the respondents no. 1/1 to 1/5 on record of this petition.

2. Learned counsel for the petitioner contended that the consent terms was filed and the order was passed by the trial Court on 10-6-2002 below the application exh. 87, wherein it is stated that the parties were present at the relevant time with their respective counsel and they admitted the filing of consent terms voluntarily and they requested the Court to pass decree in terms of the consent terms. But the trial Court rejected the earlier order vide order dated 4-7-2002 and refused to pass decree in terms of consent terms on the ground that the predecessor-in-title of the respondents have already executed power of attorney and the power of attorney holder was not present in the trial Court at the relevant point of time. Therefore, the consent terms could not be arrived at between the parties in legal manner.

3. This petition has been filled challenging the order dated 4-7-2002 passed by 6th Jt. Civil Judge (S.D.), Rajkot, whereby the learned trial Judge has refused to pass decree in terms of consent terms.

4. I have carefully considered the submissions made by the learned counsel for the parties.

5. It appears from the order dated 4-7-2002 that the the consent terms arrived at between the parties was not accepted by the trial Court only on the ground that there is no reference in the consent terms in respect of the power of attorney holder. The power of attorney was executed by the original land owner who executed the sale deed in favour of deceased respondent Nalinkuamr Valjibhai Pithadia who has expired. The plaintiff challenged the sale deed executed in favour of the deceased Nalinkumar Valjibhai Pithadia. According to the consent terms, the respondents no. 1/1 to 1/5 who are heirs and legal representatives of Nalinkuamr Valjibhai Pithadia have agreed for cancellation of the said document. The respondents have agreed the transaction made in their favour be cancelled as per the order dated 10-6-2002 made in terms of the consent terms. As such, it appears that the trial court has committed grave error in discarding and not accepting the consent terms by the impugned order dated 4-7-2002 passed below exh. 87 filed in Regular Civil Suit No. 705 of 2000.

6. I have carefully considered the submissions made by the learned counsel for the parties and perused the relevant material on record. I am in agreement with the

contention of the learned counsel for the petitioner. The impugned order dated 4-7-2002 passed below exh. 87 in Regular Civil Suit No. 705 of 2000 by the trial Court is quashed and set aside and the trial Court is directed to pass decree in terms of the consent terms. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh, J.)

/JVSatwara/